



Dale Lischer  
SMITH, GAMBRELL & RUSSELL, LLP  
1230 Peachtree Street, N.E.  
Suite 3100, Promenade II  
Atlanta, GA 30309-3592

In re Application of :  
POMMIER, François :  
U.S. Application No.: 09/763,445 :  
PCT No.: PCT/FR00/01693 :  
Int. Filing Date: 20 June 2000 :  
Priority Date: 21 June 1999 :  
Attorney's Docket No.: 041206.024 :  
For: METHOD AND INSTALLATION FOR :  
AUTOMATICALLY CUTTING . . . :

DECISION ON  
PETITION UNDER  
37 CFR 1.10(d)

This decision is in response to applicant's "Renewed Petition to Withdraw the Holding of Abandonment" filed 05 March 2002 which is treated as a petition under 37 CFR 1.10(d). No fee is required.

### **BACKGROUND**

On 31 January 2002, a decision dismissing applicant's petition to withdraw the holding of abandonment was mailed. Applicant was advised that the date on the Express Mail label for the national stage papers was listed as 22 February 2001 which is after the twenty-month period for paying the basic national fee.

On 05 March 2002, applicant filed the instant petition which was accompanied by, *inter alia*, a true copy of Express Mail mailing label number EL721440877US.

### **DISCUSSION**

Any correspondence received by the United States Patent and Trademark Office ("Office") delivered by "Express Mail" will be considered filed in the Office on the date of deposit with the USPS. 37 CFR § 1.10(a). Also, 37 CFR § 1.10(d) allows that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the

Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

In this case, the instant petition is considered to be filed promptly. Further, a review of the "Certificate of Mailing Under 37 C.F.R. 1.10" submitted with the transmittal letter and other national stage papers reveal that the Express Mail mailing number is listed. Thus, items (1) and (2) of 37 CFR 1.10(d) are satisfied.

As stated in the prior decision, a review of the above-captioned application reveals that the top copy of Express Mail mailing label is located in the file and the "Date In" is listed as "Feb 22, 01." There is no USPS stamp on the label located in the file.

In the instant petition, applicant included a copy of the bottom copy of Express Mail mailing label for EL721440877US which is stamped by the USPS as being received on "FEB 21 2001." Moreover, a review of the USPTO'S USPS Express Mail Information Database for EL21440877US shows that the date and time the package was accepted by the USPS is recorded as "02/21/2001" at "04:50 pm." Further, the "Certificate of Mailing Under 37 C.F.R. 1.10" located in the file states that the national stage was mailed on "February 21, 2001." This is sufficient to satisfy item (3).

It appears that the date listed by USPS personnel on the "Date In" box of the Express Mail mailing label for EL721440877US is incorrect. The correct filing date is 21 February 2001.

**CONCLUSION**

For the reasons listed above, applicant's petition pursuant to 37 CFR 1.10(d) to correct the date the above-captioned application entered the national stage is **GRANTED**.

Accordingly, the Notification of Abandonment (Form PCT/DO/EO/909) mailed 13 June 2001 is hereby **VACATED**.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 20 June 2000, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of **21 February 2001**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



Boris Milef  
PCT Legal Examiner  
PCT Legal Office



James Thomson  
Attorney Advisor  
PCT Legal Office

Tel.: (703) 308-6457